



DEFENSE LOGISTICS AGENCY
DEFENSE ENERGY SUPPORT CENTER
8725 JOHN J. KINGMAN ROAD, SUITE 4950
FORT BELVOIR, VA 22060-6222

IN REPLY
REFER TO:

DESC-KD

September 20, 2005

Dear Into-plane Customer/AIR Card Accountable Official:

This letter is a request for help in disseminating guidance concerning the acceptance of gratuities by the Military pilots who use the Defense Energy Support Center's (DESC's) contracts. DESC sometimes receives complaints that aircrews are accepting gratuities from contractors when purchasing fuel at commercial locations. The pilot, flight commander, aircraft commander and crew chief are considered to be Government procurement officials and as such, must not accept gratuities (<http://www.afmc-pub.wpafb.af.mil/HQ-AFMC/JA/lo/lojaf/ethics/ogeregs/2635-b.htm#202>).

The first Attachment is Executive Order #12731, entitled **Principals of Ethical Conduct For Government Officers and Employees**.¹ This order clearly identifies the ethical conduct expected of our flight crewmembers. Paragraph (d) addresses solicitation and acceptance of gratuities. Please provide a copy of this correspondence and its attachment to your local Ethics Counselor.

DESC recently sent a letter to all current Into-Plane Contractors (Attachment 2). This letter emphasizes to our suppliers that the offering of gratuities to aircrews is prohibited and is explicit that they could be subject to civil fines under 41 U.S.C. 423 (h)(3)(i), along with other consequences. This letter is also posted on the DESC Into-Plane homepage.

Please provide the widest dissemination to AIR Card holders. Request that you make this information available to the flight crews and others who use DESC Into-plane contracts. If you have any questions please contact me at 703-767-9665 or email at aircard@dla.mil.

TEXT FROM REVERSE OF AIR CARD

24 HOUR SERVICE: USA & TERRITORIES OR CANADA: 866-308-3811 OUTSIDE THE UNITED STATES: 913-217-9303.

ACCEPTANCE AND/OR USE OF THIS CARD BY AUTHORIZED PERSONNEL CONSTITUTES THE USER'S ACCEPTANCE OF THE TERMS AND CONDITIONS UNDER THE DESC AIR CARD CONTRACT. THIS CARD FACILITATES PAYMENT OF FUEL/GROUND SERVICES ONLY AND DOES NOT GUARANTEE FUEL QUALITY ASSURANCE AT NON-CONTRACT LOCATIONS. THIS CARD IS ISSUED BY AND REMAINS THE PROPERTY OF THE ISSUER PER THE TERMS AND CONDITIONS WHICH ARE AVAILABLE AT: WWW.AIRSEACARD.COM. IF CANCELED OR LOST/FOUND, THE CARD ITSELF SHOULD BE SENT TO MULTI SERVICE, 8650 COLLEGE BLVD, OVERLAND PARK, KS 68210.

FOR PROGRAM QUESTIONS, OR TO REPORT SUSPECTED MISUSE OF THIS FUEL CARD, CONTACT DESC AT 1-800-2-TOP-OFF #3.

NOTE: PILOTS, FLIGHT/AIRCRAFT COMMANDERS & CREW CHIEFS ARE CONSIDERED GOVERNMENT PROCUREMENT OFFICIALS & AS SUCH, SHALL NOT ACCEPT GRATUITIES, SEE 5 C.F.R. 2635 & PARA B2. DODD 5500.7, STANDARDS OF CONDUCT. VIOLATIONS MAY RESULT IN PROSECUTION UNDER U.S.CODE, UCMJ, AND/OR ADVERSE OR DISCIPLINARY ACTION.

DEBORAH L. VANKLEEF
Deputy Director
Government Fuel Card Program Management Office
Defense Energy Support Center

Encl: Att1: Executive Order 12731 of October 17, 1990

Att2: Into-plane Contractor Gratuity Letter

¹ EO 12731 is also accessible on the Internet at:

http://www.usoge.gov/pages/laws_regs_fedreg_stats/lrfs_files/exeorders/eo12731.html

Executive Order 12731 of October 17, 1990

**"PRINCIPLES OF ETHICAL CONDUCT
FOR GOVERNMENT OFFICERS AND EMPLOYEES"**

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish fair and exacting standards of ethical conduct for all executive branch employees, it is hereby ordered that Executive Order 12674 of April 12, 1989, is henceforth modified to read as follows:

"EXECUTIVE ORDER"

"principles of ethical conduct for government officers and employees "By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish fair and exacting standards of ethical conduct for all executive branch employees, it is hereby ordered as follows:

"Part 1 -- PRINCIPLES OF ETHICAL CONDUCT"

"Section 101. Principles of Ethical Conduct. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each Federal employee shall respect and adhere to the fundamental principles of ethical service as implemented in regulations promulgated under sections 201 and 301 of this order:

"(a) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws, and ethical principles above private gain.

"(b) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

"(c) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

"(d) An employee shall not, except pursuant to such reasonable exceptions as are provided by regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

"(e) Employees shall put forth honest effort in the performance of their duties.

"(f) Employees shall make no unauthorized commitments or promises of any kind purporting to bind the Government.

"(g) Employees shall not use public office for private gain.

"(h) Employees shall act impartially and not give preferential treatment to any private organization or individual.

"(i) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

"(j) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

"(k) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

"(l) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those -- such as Federal, State, or local taxes -- that are imposed by law.

"(m) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

"(n) Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated pursuant to this order.

"Sec. 102. Limitations on Outside Earned Income.

"(a) No employee who is appointed by the President to a full-time noncareer position in the executive branch (including full-time noncareer employees in the White House Office, the Office of Policy Development, and the Office of Cabinet Affairs), shall receive any earned income for any outside employment or activity performed during that Presidential appointment.

"(b) The prohibition set forth in subsection (a) shall not apply to any full-time noncareer employees employed pursuant to 3 U.S.C. 105 and 3 U.S.C. 107(a) at salaries below the minimum rate of basic pay then paid for GS-9 of the General Schedule. Any outside employment must comply with relevant agency standards of conduct, including any requirements for approval of outside employment.

"PART II -- OFFICE OF GOVERNMENT ETHICS AUTHORITY

"Sec. 201. The Office of Government Ethics. The Office of Government Ethics shall be responsible for administering this order by:

"(a) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations that establish a single, comprehensive, and clear set of executive-branch standards of conduct that shall be objective, reasonable, and enforceable.

"(b) Developing, disseminating, and periodically updating an ethics manual for employees of the executive branch describing the applicable statutes, rules, decisions, and policies.

"(c) Promulgating, with the concurrence of the Attorney General, regulations interpreting the provisions of the post-employment statute, section 207 of title 18, United States Code; the general conflict-of-interest statute, section 208 of title 18, United States Code; and the statute prohibiting supplementation of salaries, section 209 of title 18, United States Code.

"(d) Promulgating, in consultation with the Attorney General and the Office of Personnel Management, regulations establishing a system of nonpublic (confidential) financial disclosure by executive branch employees to complement the system of public disclosure under the Ethics in Government Act of 1978. Such regulations shall include criteria to guide agencies in determining which employees shall submit these reports.

"(e) Ensuring that any implementing regulations issued by agencies under this order are consistent with and promulgated in accordance with this order.

"Sec. 202. Executive Office of the President. In that the agencies within the Executive Office of the President (EOP) currently exercise functions that are not distinct and separate from each other within the meaning and for the purposes of section 207(e) of title 18, United States Code, those agencies shall be treated as one agency under section 207(c) of title 18, United States Code.

"PART III -- AGENCY RESPONSIBILITIES

"Sec. 301. Agency Responsibilities. Each agency head is directed to:

"(a) Supplement, as necessary and appropriate, the comprehensive executive branch-wide regulations of the Office of Government Ethics, with regulations of special applicability to the particular functions and activities of that agency. Any supplementary agency regulations shall be prepared as addenda to the branch-wide regulations and promulgated jointly with the Office of Government Ethics, at the agency's expense, for inclusion in Title 5 of the Code of Federal Regulations.

"(b) Ensure the review by all employees of this order and regulations promulgated pursuant to the order.

"(c) Coordinate with the Office of Government Ethics in developing annual agency ethics training plans. Such training shall include mandatory annual briefings on ethics and standards of conduct for all employees appointed by the President, all employees in the Executive Office of the President, all officials required to file public or nonpublic financial disclosure reports, all employees who are contracting officers and procurement officials, and any other employees designated by the agency head.

"(d) Where practicable, consult formally or informally with the Office of Government Ethics prior to granting any exemption under section 208 of title 18, United States Code, and provide the Director of the Office of Government Ethics a copy of any exemption granted.

"(e) Ensure that the rank, responsibilities, authority, staffing, and resources of the Designated Agency Ethics Official are sufficient to ensure the effectiveness of the agency ethics program. Support should include the provision of a separate budget line item for ethics activities, where practicable.

"PART IV -- DELEGATIONS OF AUTHORITY

"Sec. 401. Delegations to Agency Heads. Except in the case of the head of an agency, the authority of the President under sections 203(d), 205(e), and 208(b) of title 18, United States Code, to grant exemptions or approvals to individuals, is delegated to the head of the agency in which an individual requiring an exemption or approval is employed or to which the individual (or the committee, commission, board, or similar group employing the individual) is attached for purposes of administration.

"Sec. 402. Delegations to the Counsel to the President.

"(a) Except as provided in section 401, the authority of the President under sections 203(d), 205(e), and 208(b) of title 18, United States Code, to grant exemptions or approvals for Presidential appointees to committees, commissions, boards, or similar groups established by the President is delegated to the Counsel to the President.

"(b) The authority of the President under sections 203(d), 205(e), and 208(b) of title 18, United States Code, to grant exemptions or approvals for individuals appointed pursuant to 3 U.S.C. 105 and 3 U.S.C. 107(a), is delegated to the Counsel to the President.

"Sec. 403. Delegation Regarding Civil Service. The Office of Personnel Management and the Office of Government Ethics, as appropriate, are delegated the authority vested in the President by 5 U.S.C. 7301 to establish general regulations for the implementation of this Executive Order.

"PART V -- GENERAL PROVISIONS

"Sec. 501. Revocations. The following Executive orders are hereby revoked:

"(a) Executive Order No. 11222 of May 8, 1965.

"(b) Executive Order No. 12565 of September 25, 1986.

"Sec. 502. Savings Provisions.

"(a) All actions already taken by the President or by his delegates concerning matters affected by this order and in force when this order is issued, including any regulations issued under Executive Order 11222, Executive Order 12565, or statutory authority, shall, except as they are irreconcilable with the provisions of this order or terminate by operation of law or by Presidential action, remain in effect until properly amended, modified, or revoked pursuant to the authority conferred by this order or any regulations promulgated under this order. Notwithstanding anything in section 102 of this order, employees may carry out preexisting contractual obligations entered into before April 12, 1989.

"(b) Financial reports filed in confidence (pursuant to the authority of Executive Order No. 11222, 5 C.F.R. Part 735, and individual agency regulations) shall continue to be held in confidence.

"Sec. 503. Definitions. For purposes of this order, the term:

"(a) 'Contracting officers and procurement officials' means all such officers and officials as defined in the Office of Federal Procurement Policy Act Amendments of 1988.

"(b) 'Employee' means any officer or employee of an agency, including a special Government employee.

"(c) 'Agency' means any executive agency as defined in 5 U.S.C. 105, including any executive department as defined in 5 U.S.C. 101, Government corporation as defined in 5 U.S.C. 103, or an independent establishment in the executive branch as defined in 5 U.S.C. 104 (other than the General Accounting Office), and the United States Postal Service and Postal Rate Commission.

"(d) 'Head of an agency' means, in the case of an agency headed by more than one person, the chair or comparable member of such agency.

"(e) 'Special Government employee' means a special Government employee as defined in 18 U.S.C. 202(a).

"Sec. 504. Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.".

George Bush

The White House,
October 17, 1990.



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IN REPLY
REFER TO:

DESC-PH

September 20, 2005

Dear DESC Into-Plane Contractor,

Occasionally, DESC receives information that a DESC contractor may have provided illegal gratuities to Government personnel who purchase fuel at commercial airports. Such allegations have included the offering of free food, rental cars, taxi rides, and T-shirts. Given the serious nature of these allegations, I would like to take this opportunity to remind you of the prohibitions against providing unlawful gratuities to Government personnel.

DESC into-plane contracts contain specific clauses governing the offering and giving of gratuities to Government employees. DESC Intoplane Contract Clause I27 Gratuities and the criminal statute it implements prohibits the giving of gratuities to Government personnel when given with the intent to obtain a contract or influence favorable treatment under a contract. The phrase "gratuity" is defined to include any gift, favor, entertainment, transportation, lodgings, meals, services, training, or any other item having monetary value.

The pilot, flight commander, aircraft commander and crew chief are Government procurement officials. These individuals are the Government personnel who elect to fly into your location under the intoplane requirements contract and who, in fact, obligate the Government to pay for fuel purchased. When contractors provide personal incentives such as T-shirts, knives, mugs, caps, free rental cars, beer, and food to pilots or others who decide whether to land at a particular location, it can lead one to conclude that the contractor was providing these incentives with the intent "to obtain favorable action under the contract." When these incentives are based upon the volume of fuel lifted, it is even easier to make the inference.

Under 41 U.S.C. § 423 (h)(3)(i), giving gratuities to "procurement officials" is punishable by a civil fine of not more than \$1,000,000. In addition, the agency may also deny payment of any profit under the contract. Pursuant to the Gratuities Clause, when the agency head determines that the contractor offered or gave a gratuity to Government personnel and intended to obtain a contract or favorable treatment under the contract, the Government has the right to take the following actions:

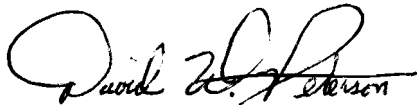
- 1.) to terminate the contract,
- 2.) initiate debarment or suspension action,
- 3.) assess exemplary damages of not less than three nor more than ten times the cost incurred by the contractor in giving the gratuities to the person concerned
- 4.) to pursue the same remedies as in breach of contract, and
- 5.) to pursue any other rights and remedies provided by law or under the instant contract.

DESC business shall be conducted in a manner above reproach with complete impartiality and without preferential treatment. The best policy is to avoid any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. In order to ensure that the issue of gratuities is apparent and clear to both pilots and contractors, DESC has placed a gratuities warning on the reverse of the AIR Card.

If you suspect any unlawful activity concerning the soliciting or acceptance of gratuities, or conflict of interest, please disclose this information immediately to either the DESC Contracting Officer or DESC's Fraud Counsel, 703-767-5020. Action can only take place if we are informed of these matters. Please disseminate this information to your personnel in the hopes of educating them in conducting proper business practices.

If you have any questions, please call your respective Contracting Officer, Tammy Baltzell, at (703) 767-8469 or J. Ann Wilson at (703) 767-8467.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Peterson". The signature is fluid and cursive, with the first name "David" being the most prominent.

DAVID W. PETERSON
Chief, Intoplane Fuels Division
Direct Delivery Fuels
Defense Energy Support Center